



09-22.05

2667

In Re Application Of: Brian G. Agee et al. |  
Serial No. 09/787,789 |  
Filed: 06/10/2001 |  
For: Method and Appara...|

Examiner: Blanche Wong  
Group Art Unit: 2667  
Atty. Docket No:  
Date: Sept. 20, 2005

THE COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SIR: Transmitted herewith is a Correction of Non-Compliant Amendment for the above Application, along with a copy of the Notice of Non-Compliant Amendment.

Also enclosed are, in the order preferred, the alternative petitions for Extension of Time or for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. 1.137(b).

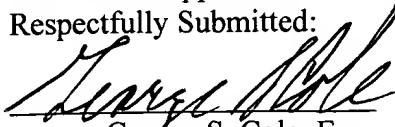
The Commissioner is herewith authorized to charge payment of any necessary fees, or credit any overpayment, to Deposit Account 50-0705 associated with this communication for any related purpose, including: ( A DUPLICATE COPY OF THIS SHEET IS ENCLOSED)

- Any additional filing fees required for presentation of extra claims  
 Any extension or petition fees.

Petitioner respectfully apologizes for any delay. On Feb. 18, 2005 Attorney in telephonic interview approved Examiner's Amendment to Claims 1 and 2 (the only claims changed). At this time Attorney believed that the Application was now ready to issue and no further action on his part was required and had heard Examiner express the same opinion. That same day Attorney also sent by Express Mail to Examiner a letter confirming the telephone approval and substance of the telephonic interview; but to spare the PTO's file capacity and Examiner's time, included those limited set of pages indicating just the changes to the first two claims.

On this day, Sept. 20, 2005, Examiner telephoned. To her surprise, the patent was marked as nearing abandonment. Searching the file, she then found a "Notice of Non-Compliant Amendment" that the PTO had sent out, apparently in April. Attorney never received this Notice and so had not responded. The only non-compliant aspect asserted was the absence of a new listing of all claims, marked as "(currently amended)" for Claims 1 and 2, and "(original)" for all other claims. A copy of just this complete claims listing (all 54 pages of it) is now enclosed. As all corrections requested by Examiner have been made when requested by Examiner, and both Examiner and Attorney consider the application fit to issue, it is humbly requested that the application be allowed to issue as a patent.

Respectfully Submitted:



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**Date:** Sept. 20, 2005

**Tot. # of pages (with header):**

**To:** USPTO Central Fax  
Attn: Examiner Blanche Wong, Art Unit 2667

**Recipient's Fax:** 571-273-8300

**From:** George S. Cole, Esq.

**Recipient's Phone:** 571-272-3177

**Re:** Application 09/878,789 Agee et al.

Dear Examiner Wong:

I appreciate your double-checking of the other claims – which led you to catch the double-counting of claim 56, which was corrected at the PTO but not on the original file here, and thus not on the first fax of today.

I agree with your amendment of Claim 108, in absolute conformity with the like amendment of Feb. 18<sup>th</sup>, 2005, substituting on line 1221 of page 42 for the word “waves” the word “signals”. I have enclosed all three pages of claim 108, marking it as “(currently amended)” to conform to this change.

I then went through the claims-numbering and corrected all those after claim 56, to reflect the elimination of the double use of that number. This required that I change the internal numbers for dependent claims after claim 56. I sent a second fax with these changes to the Central Fax. This changed the internal dependency number linkings on claims 63-75; 77-100; 102-104; 110-112; and 114. I then corrected typos showing forward-linking for claims 137-139 and 141-143. All changes are shown by the use of strikethrough and brackets; however, as I understand it, the numbering change does not change the subject matter and thus does not count as an amendment, being a clerical correction rather than a substantive change.

Finally, the client has indicated that the last drawing, the final flowchart, should be used...as you had suspected.

Many thanks for your assistance and I hope this application is now in shape for allowance.

**\*FAX\***

Warning: The accompanying materials may be confidential in nature and involve attorney-client, litigation-related, or settlement-related privileges. If you are not the intended recipient, or an employee of the same authorized to retrieve this material, please do not read the material; instead, telephone the sender and inform him of the problem. Your assistance and cooperation are appreciated!

# CERTIFICATE of FAX TRANSMISSION

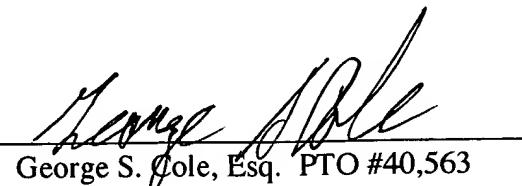
Date of Deposit: Sept. 20<sup>th</sup>, 2005

I hereby certify that the following documents:

- 
- Petition, in the alternative, for a patent to issue, whether the application need an extension of time or revival (if so, as unintentionally abandoned);  
with Deposit Account Authorization;
  - form petition for extension of time;
  - form petition to revive unintentionally abandoned application;
  - copy of Notice of Non-Compliant Amendment as first received by Attorney when faxed on 9/20/05 by Examiner;
  - correctly amended claims as per Notice and Examiner's second telephone call and Examiner's Amendment;
  - and,
  - this Certificate of Faxing, with itemization of what was sent
- 

sent by fax transmission to the United States Patent Office Central Fax number (571) 273-8300 as of this date, intended for the following recipient:

**Mail Stop Non-Fee Amendment  
Commissioner For Patents  
Attn: Examiner Blanche Wong, Art Group 2667  
P.O. Box 1450  
Arlington, VA 22313-1450.**



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George S. Cole, Esq. PTO #40,563



## EXPRESS MAIL CERTIFICATE

"Express Mail" mailing label No: \_\_\_\_\_EU 974800285 US\_\_\_\_\_

Date of Deposit: \_\_\_\_\_Sept. 20th, 2005\_\_\_\_\_

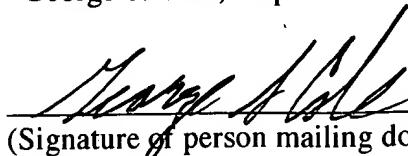
I hereby certify that the following documents:

- 
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with Deposit Account Authorization;
  - form petition for extension of time;
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  - correctly amended claims as per Notice and Examiner's second telephone call and Examiner's Amendment;  
and,
  - a copy of this Express Mail Certificate;
- 

are being deposited in a single envelope with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and such envelope is addressed to:

**Mail Stop Non-Fee Amendment  
Attn: Examiner Blanche Wong, Art Unit 2667  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450.**

George S. Cole, Esq.



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(Signature of person mailing documents)



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 2/18/05 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

1. Amendments to the specification:  
 A. Amended paragraph(s) do not include markings.  
 B. New paragraph(s) should not be underlined.  
 C. Other \_\_\_\_\_
2. Abstract:  
 A. Not presented on a separate sheet. 37 CFR 1.72.  
 B. Other \_\_\_\_\_
3. Amendments to the drawings: \_\_\_\_\_
4. Amendments to the claims:  
 A. A complete listing of all of the claims is not present.  
 B. The listing of claims does not include the text of all pending claims (including withdrawn claims)  
 C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following 7 status identifiers: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New) and (Not entered).  
 D. The claims of this amendment paper have not been presented in ascending numerical order.  
 E. Other: \_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/oipa/prepatent/officeflyer.pdf>.

If the non-compliant amendment is a PRELIMINARY AMENDMENT, applicant is given ONE MONTH from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this ONE MONTH time limit is not extendable.

If the non-compliant amendment is a reply to a NON-FINAL OFFICE ACTION (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a TIME PERIOD of ONE MONTH from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).

If the amendment is a reply to a FINAL REJECTION, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

John J. Doherty  
Legal Instruments Examiner (LIE)

571-222-8995  
Telephone No.